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 Tempo Music Investments, LLC

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

TEMPO MUSIC INVESTMENTS, LLC Case No. 2:24-CV-07910

Plaintiff,

v.

**COMPLAINT FOR COPYRIGHT  
 INFRINGEMENT (17 U.S.C. § 101 *et*  
*seq.*)**

**DEMAND FOR JURY TRIAL**

MILEY CYRUS, an individual;  
 GREGORY HEIN, an individual;  
 MICHAEL POLLACK, an individual;  
 SONY MUSIC PUBLISHING (US)  
 LLC; CONCORD MUSIC  
 PUBLISHING LLC; WARNER-  
 TAMERLANE PUBLISHING CORP.;  
 MCEO PUBLISHING; WHAT KEY  
 DO YOU WANT IT IN MUSIC;  
 SONGS WITH A PURE TONE;  
 SONGS BY GREGORY HEIN;  
 DROOG PUBLISHING; THESE ARE  
 PULSE SONGS; WIDE EYED  
 GLOBAL; MCEO, INC.; SONY  
 MUSIC ENTERTAINMENT; APPLE  
 INC.; IHEARTMEDIA, INC.;  
 PANDORA MEDIA, LLC; DEEZER  
 S.A.; AMAZON.COM SERVICES  
 LLC; SOUNDCLOUD GLOBAL  
 LIMITED & CO. KG; TIDAL MUSIC  
 LLC; XANDRIE SA; LIVE NATION  
 ENTERTAINMENT, INC.; TARGET  
 CORP.; WAL-MART.COM USA, LLC;  
 WALMART INC.; BARNES &  
 NOBLE BOOKSELLERS, INC.;  
 DISNEY PLATFORM

DISTRIBUTION, INC.; and DOES 1-10, inclusive.

Defendants.

Plaintiff Tempo Music Investments, LLC (“Tempo” or “Plaintiff”) alleges the following against Defendants Miley Cyrus; Gregory Hein; Michal Pollack; Sony Music Publishing (US) LLC; Concord Music Publishing LLC; Warner-Tamerlane Publishing Corp.; MCEO Publishing; What Key Do You Want It In Music; Songs With A Pure Tone; Songs By Gregory Hein; DROOG Publishing; These Are Pulse Songs; Wide Eyed Global; MCEO, Inc.; Sony Music Entertainment; Apple Inc.; iHeartMedia, Inc.; Pandora Media, LLC; Deezer S.A.; Amazon.com Services LLC; Soundcloud Global Limited & CO. KG; Tidal Music LLC; Xandrie SA; Live Nation Entertainment, Inc.; Target Corp.; Wal-Mart.com USA LLC; Walmart Inc.; Barnes & Noble Booksellers, Inc.; Disney Platform Distribution, Inc.; and Does 1 through 10, inclusive (collectively, “Defendants”):

### **INTRODUCTION**

1. This action arises out of Defendants’ infringement of the copyright of the hit song entitled “When I Was Your Man” that was released by internationally renowned recording artist Bruno Mars in 2013. Mars released the song in January 2013 as the third promotional single from his second album, *Unorthodox Jukebox*.

2. By April 2013, after more than 16 weeks on the Billboard Hot 100 charts, “When I Was Your Man” had climbed to No. 1. Mars also received a Grammy nomination for Best Pop Solo Performance for the song in December 2013, and in 2014, the song won the award of “Most Performed Song” at the Pop Music Awards hosted by the American Society of Composers, Authors and Publishers (ASCAP). In May 2021, “When I was Your Man” was awarded its eleventh platinum certification.

3. Plaintiff Tempo Music Investments, LLC owns a share of the copyright in “When I Was Your Man” through its acquisition of the catalog of songwriter Philip Lawrence, a co-author of the song along with Mars and others.

4. Mars and the writers behind “When I was Your Man” have achieved great success with the song, and now, so have Defendants. In January 2023, Miley

1 Cyrus, another well-known recording artist and a Defendant in this action, released  
2 the song “Flowers.” Immediately upon the release of “Flowers,” the public  
3 recognized the striking similarities between the song and “When I Was Your  
4 Man.” Although Michael Pollack, one of the co-authors of “Flowers,” apparently  
5 refused to comment on the song’s connection to “When I Was Your Man” in an  
6 interview with *Billboard* in March 2023, the article notes that the similarities  
7 between the two songs have been identified by many, and that “any listener can  
8 detect that the song boasts a chorus that is the inverse of what Cyrus sings on  
9 ‘Flowers.’”<sup>1</sup>

10 5. “Flowers” became an overnight sensation, debuting at No. 1 on the  
11 Billboard Hot 100 chart and breaking the record to become the fastest song to  
12 reach one billion streams on streaming service Spotify. The song also earned  
13 Cyrus her first set of Grammy wins for Record of the Year and Best Pop Solo  
14 Performance at the 66th Annual Grammy Awards in February 2024. Cyrus even  
15 performed the song live at the ceremony. Additionally, “Flowers” won Best  
16 International Song at the Brit Awards 2024.

17 6. Any fan of Bruno Mars’ “When I Was Your Man” knows that Miley  
18 Cyrus’ “Flowers” did not achieve all of that success on its own. “Flowers”  
19 duplicates numerous melodic, harmonic, and lyrical elements of “When I Was  
20 Your Man,” including the melodic pitch design and sequence of the verse, the  
21 connecting bass-line, certain bars of the chorus, certain theatrical music elements,  
22 lyric elements, and specific chord progressions.

23 7. It is undeniable based on the combination and number of similarities  
24 between the two recordings that “Flowers” would not exist without “When I Was

25 \_\_\_\_\_  
26 <sup>1</sup> In fact, the week after “Flowers” was released, on-demand streaming for “When I  
27 Was Your Man” – “always a productive streamer” in the ten years since its release  
28 according to *Billboard* – reportedly rose from 4.5 million to 5.3 million, a 19.5%  
gain. *Billboard* credits the “chatter over the relationship between the two songs,”  
including speculation by fans that “Flowers” was inspired by “When I Was Your  
Man,” with the boost in streaming of the latter.

1 Your Man.” Accordingly, Plaintiff brings this action for copyright infringement  
 2 arising out of Defendants’ unauthorized reproduction, distribution, and exploitation  
 3 of “When I Was Your Man.”

#### 4 **JURISDICTION AND VENUE**

5 8. This Court has subject matter jurisdiction over this action pursuant to  
 6 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331 because it arises under the Copyright  
 7 Act (17 U.S.C. § 101 *et seq.*).

8 9. The Court has personal jurisdiction over Defendants because some or  
 9 all: (1) reside or have their principal place of business in California; and/or (2)  
 10 conduct systematic and continuous business activities within California and this  
 11 judicial district.

12 10. Venue is proper in this judicial district pursuant to 28 U.S.C. §  
 13 1391(b)-(d) and 28 U.S.C. §1400(a) because a substantial part of the acts or  
 14 omissions giving rise to the claims set forth herein occurred in this judicial district  
 15 and/or Defendants reside or have their principal place of business in this judicial  
 16 district.

#### 17 **PARTIES**

18 11. Plaintiff Tempo Music Investments, LLC is a limited liability  
 19 company organized under the laws of the State of Delaware, with its principal  
 20 place of business in New York, New York. Plaintiff invests in and owns rights to  
 21 an extensive portfolio of songs and musical compositions by global artists.  
 22 Plaintiff acquired a percentage of the copyright in “When I Was Your Man”  
 23 through a transaction with one of the song’s co-authors, Philip Lawrence. On  
 24 March 6, 2020, Lawrence’s assignment of his rights in “When I Was Your Man” to  
 25 Plaintiff was recorded with the United States Copyright Office under Recordation  
 26 No. V9975D044. Plaintiff is engaged in the commercial exploitation of the  
 27 copyright it acquired from Lawrence in “When I Was Your Man.”  
 28

12. Defendant Miley Cyrus is an individual who, upon information and belief, resides in Los Angeles County, California. Cyrus is an accomplished singer, songwriter, and actress. Cyrus has received several Grammy nominations for her work – and thanks to “Flowers,” two Grammy awards – and has won Teen Choice Awards, Billboard Music Words, World Music Awards, MTV Video Music Awards, a People’s Choice Award, and a GLAAD Media Award. Cyrus performs “Flowers” and is credited as a co-author of the song. Upon information and belief, Cyrus participated in, caused, and/or induced the infringing conduct alleged herein.

13. Defendant Gregory “Aldae” Hein is an individual who, upon information and belief, resides in Los Angeles County, California. Hein is a songwriter and music producer who has co-written hit songs for artists including Justin Bieber, Shawn Mendes, and John Legend. Hein is credited as a co-author of “Flowers” and has received Grammy nominations for Song of the Year and Album of the Year for his work on “Flowers.” Upon information and belief, Hein participated in, caused, and/or induced the infringing conduct alleged herein.

14. Defendant Michael Pollack is an individual who, upon information and belief, resides in Los Angeles County, California. Pollack is an accomplished songwriter and producer whose songs for artists such as Maroon 5 and Justin Bieber have topped the Billboard music charts. Pollack is credited as a co-author of “Flowers.” Pollack has received seven Grammy nominations, three of which are for Pollack’s work on “Flowers.” Upon information and belief, Pollack participated in, caused, and/or induced the infringing conduct alleged herein.

15. Defendant Sony Music Publishing (US) LLC (“Sony Music Publishing”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in New York, New York. Upon information and belief, Sony Music Publishing is a music publisher that

1 participated in the production, preparation, distribution, performance, licensing,  
2 marketing, promotion, and/or other exploitation of “Flowers.”

3 16. Defendant Sony Music Entertainment is a general partnership  
4 organized under the laws of the State of Delaware, with its principal place of  
5 business in New York, New York. Upon information and belief, Sony Music  
6 Entertainment participated in the production, preparation, distribution,  
7 performance, licensing, marketing, promotion, and/or other exploitation of  
8 “Flowers.”

9 17. Defendant Concord Music Publishing LLC (“Concord”) is a limited  
10 liability company organized under the laws of the State of Delaware, with an office  
11 in Los Angeles, California. Upon information and belief, Concord is a music  
12 publisher that participated in the production, preparation, distribution,  
13 performance, licensing, marketing, promotion, and/or other exploitation of both  
14 “When I Was Your Man” and “Flowers.”

15 18. Defendant Warner-Tamerlane Publishing Corp. (“Warner”) is a  
16 corporation organized under the laws of the State of Delaware, with its principal  
17 place of business in Los Angeles, California. Upon information and belief, Warner  
18 is a music publisher that participated in the production, preparation, distribution,  
19 performance, licensing, marketing, promotion, and/or other exploitation of both  
20 “When I Was Your Man” and “Flowers.”

21 19. Defendant MCEO, Inc. (“MCEO”) is a corporation organized under  
22 the laws of the State of Tennessee, with its principal place of business in Nashville,  
23 Tennessee. Upon information and belief, MCEO is a music publisher that  
24 participated in the production, preparation, distribution, performance, licensing,  
25 marketing, promotion, and/or other exploitation of “Flowers.”

26 20. Defendant Apple Inc. (“Apple”) is a corporation organized under the  
27 laws of the State of California, with its principal place of business in Cupertino,  
28 California. Apple, through its music streaming service Apple Music, has



1 participated in the reproduction and distribution of both “When I Was Your Man”  
2 and “Flowers.”

3 21. Defendant iHeartMedia, Inc. (“iHeartMedia”) is a corporation  
4 organized under the laws of the State of Delaware, with its principal place of  
5 business in San Antonio, Texas. iHeartMedia, through its music streaming service  
6 iHeartRadio, has participated in the reproduction and distribution of both “When I  
7 Was Your Man” and “Flowers.”

8 22. Defendant Pandora Media, LLC (“Pandora”) is a limited liability  
9 company organized under the laws of the State of Delaware, with its principal  
10 place of business in Oakland, California. Pandora, through its music streaming  
11 service, has participated in the reproduction and distribution of both “When I Was  
12 Your Man” and “Flowers.”

13 23. Defendant Amazon.com Services LLC (“Amazon”) is a corporation  
14 organized under the laws of the State of Delaware, with its principal place of  
15 business in Seattle, Washington. Amazon, through its music streaming service  
16 Amazon Music, has participated in the reproduction, distribution, and sale of both  
17 “When I Was Your Man” and “Flowers.”

18 24. Defendant Tidal Music LLC (“Tidal”) is a limited liability company  
19 organized under the laws of the State of Delaware, with its principal place of  
20 business in New York, New York. Tidal, through its music streaming service, has  
21 participated in the reproduction and distribution of both “When I Was Your Man”  
22 and “Flowers.”

23 25. Defendant Soundcloud Global Limited & Co. KG (“Soundcloud”) is a  
24 limited liability partnership organized under the laws of Germany, with its  
25 principal place of business in Berlin, Germany. Soundcloud, through its music  
26 streaming service, has participated in the reproduction and distribution of both  
27 “When I Was Your Man” and “Flowers.”  
28



1           26. Defendant Deezer S.A. (“Deezer”) is a limited company organized  
2 under the laws of France, with its principal place of business in Paris, France.  
3 Deezer, through its music streaming service, has participated in the reproduction  
4 and distribution of both “When I Was Your Man” and “Flowers.”

5           27. Defendant Xandrie SA (“Xandrie”) is a limited company organized  
6 under the laws of France, with its principal place of business in Paris, France.  
7 Xandrie, through its music streaming service Qobuz, has participated in the  
8 reproduction and distribution of both “When I Was Your Man” and “Flowers.”

9           28. Defendant Disney Platform Distribution, Inc. (“Disney”) is a  
10 corporation organized under the laws of the State of Delaware, with its principal  
11 place of business in Burbank, California. Disney has participated in the  
12 reproduction, distribution, and/or performance of “Flowers,” including by releasing  
13 a documentary concert series featuring Cyrus’ performance of “Flowers” on March  
14 10, 2023.

15           29. Defendant Live Nation Entertainment, Inc. (“Live Nation”) is a  
16 corporation organized under the laws of the State of Delaware, with its principal  
17 place of business in Beverly Hills, California. Live Nation has participated in the  
18 reproduction, distribution, sale, and/or other exploitation of “Flowers,” including  
19 by selling copies of the song through Cyrus’s official online store  
20 (shop.mileycyrus.com).

21           30. Defendant Target Corp. (“Target”) is a corporation organized under  
22 the laws of the State of Minnesota, with its principal place of business in  
23 Minneapolis, Minnesota. Target has hundreds of retail locations in California.  
24 Target has participated in the reproduction, distribution, sale, and/or other  
25 exploitation of both “When I Was Your Man” and “Flowers,” including by selling  
26 copies of the songs in stores and online.

27           31. Defendant Wal-Mart.com USA LLC (“Wal-Mart.com”) is a limited  
28 liability company organized under the laws of the State of California, with its

1 principal place of business in San Bruno, California. Wal-Mart.com has  
2 participated in the reproduction, distribution, sale, and/or other exploitation of both  
3 “When I Was Your Man” and “Flowers,” including by selling copies of the songs  
4 online.

5 32. Defendant Walmart Inc. (“Walmart”) is a corporation organized under  
6 the laws of the State of Delaware, with its principal place of business in  
7 Bentonville, Arkansas. Walmart has hundreds of retail locations in California.  
8 Walmart has participated in the reproduction, distribution, sale, and/or other  
9 exploitation of both “When I Was Your Man” and “Flowers,” including by selling  
10 copies of the songs in its brick-and-mortar stores.

11 33. Defendant Barnes & Noble Booksellers, Inc. (“Barnes & Noble”) is a  
12 corporation organized under the laws of the State of Delaware, with its principal  
13 place of business in New York, New York. Barnes & Noble has participated in the  
14 reproduction, distribution, sale, and/or other exploitation of both “When I Was  
15 Your Man” and “Flowers,” including by selling copies of the songs in stores and  
16 online.

17 34. Defendant MCEO Publishing is a business of unknown form with an  
18 unknown principal place of business that, upon information and belief, is a music  
19 publisher that participated in the production, preparation, distribution,  
20 performance, licensing, marketing, promotion, and/or other exploitation of  
21 “Flowers.”

22 35. Defendant What Key Do You Want It In Music is a business of  
23 unknown form with an unknown principal place of business that, upon information  
24 and belief, is a music publisher that participated in the production, preparation,  
25 distribution, performance, licensing, marketing, promotion, and/or other  
26 exploitation of “Flowers.”

27 36. Defendant Songs With A Pure Tone is a business of unknown form  
28 with an unknown principal place of business that, upon information and belief, is a

1 music publisher that participated in the production, preparation, distribution,  
2 performance, licensing, marketing, promotion, and/or other exploitation of  
3 “Flowers.”

4 37. Defendant Songs By Gregory Hein is a business of unknown form  
5 with an unknown principal place of business that, upon information and belief, is a  
6 music publisher that participated in the production, preparation, distribution,  
7 performance, licensing, marketing, promotion, and/or other exploitation of  
8 “Flowers.”

9 38. Defendant DROOG Publishing is a business of unknown form with an  
10 unknown principal place of business that, upon information and belief, is a music  
11 publisher that participated in the production, preparation, distribution,  
12 performance, licensing, marketing, promotion, and/or other exploitation of  
13 “Flowers.”

14 39. Defendant These Are Pulse Songs is a business of unknown form with  
15 an unknown principal place of business that, upon information and belief, is a  
16 music publisher that participated in the production, preparation, distribution,  
17 performance, licensing, marketing, promotion, and/or other exploitation of  
18 “Flowers.”

19 40. Defendant Wide Eyed Global is a business of unknown form with an  
20 unknown principal place of business that, upon information and belief, is a music  
21 publisher that participated in the production, preparation, distribution,  
22 performance, licensing, marketing, promotion, and/or other exploitation of  
23 “Flowers.”

24 41. The true names and capacities (whether individual, corporate, or  
25 otherwise) of Defendants named herein as Does 1 through 10, inclusive, are  
26 presently unknown to Plaintiff. Therefore, Plaintiff sues these Defendants by such  
27 fictitious names. Plaintiff will seek leave to amend pursuant to Federal Rules of  
28 Civil Procedure 15(a)(2) and 21 to allege the true names and capacities of Does 1

1 through 10, inclusive, when the same have been ascertained. Additionally,  
 2 Plaintiff is informed and believes, and on that basis alleges, that each of the Doe  
 3 Defendants are legally responsible for the acts and omissions alleged herein.

4 42. Plaintiff is informed and believes, and on that basis alleges, that at all  
 5 relevant times: (a) Defendants and Does 1 through 10 are each the alter ego, co-  
 6 conspirator, duly registered agent, servant, employee, customer, and/or  
 7 representative of each of the other Defendants; and (b) Defendants acted within the  
 8 course, scope, and authority of their profession, employment, agency, and/or  
 9 management roles in committing the acts and omissions alleged herein.

### 10 **FACTUAL BACKGROUND**

#### 11 **I. Plaintiff Acquires a Share of the Copyright in “When I Was Your Man”**

12 43. “When I Was Your Man” was written by Bruno Mars, Philip  
 13 Lawrence, Ari Levine, and Andrew Wyatt. The musical composition of “When I  
 14 Was Your Man” was registered in the United States Copyright Office in 2013 with  
 15 Registration Nos. PA0001850617 (dated March 18, 2013 with December 11, 2012  
 16 as the date of publication), PA0001869828 (dated October 24, 20213 with  
 17 December 11, 2012 as the date of publication), PA0001852243 (dated May 13,  
 18 2013 with December 10, 2012 as the date of publication), and PA0001834773  
 19 (dated March 11, 2013 with December 6, 2012 as the date of publication, and  
 20 supplemented by PA0002186926 on October 23, 2018).

21 44. “When I Was Your Man” was a smash hit upon its release on January  
 22 15, 2013, climbing to No. 1 on the Billboard Hot 100 charts and earning co-author  
 23 and performer Bruno Mars a Grammy nomination.

24 45. In or around 2020, Plaintiff acquired the copyright interests in “When  
 25 I Was Your Man” held by Lawrence and his publishing entities.

1 **II. Defendants Have Access to “When I Was Your Man” Prior to Creating**  
 2 **and Exploiting “Flowers”**

3 46. There are countless examples of Defendants having had access to  
 4 “When I Was Your Man” in the ten years between the release of “When I Was  
 5 Your Man” and “Flowers.” For example:

6 a. Defendants Concord and Warner are credited as music  
 7 publishers for both “When I Was Your Man” and “Flowers;”

8 b. Mars performed “When I Was Your Man” at the iHeartRadio  
 9 Music Festival in Las Vegas, Nevada on September 21, 2013, where Cyrus also  
 10 appeared and performed her hit song “Wrecking Ball;”

11 c. “When I Was Your Man” has been widely available for online  
 12 and in-store purchase, as well on numerous music streaming platforms following  
 13 its release; and

14 d. “When I Was Your Man” has been played frequently by radio  
 15 stations across the country, which is no surprise given its No. 1 ranking on the  
 16 Billboard Hot 100 and Billboard Radio Songs chart.

17 **III. “Flowers” Is Substantially Similar to “When I Was Your Man”**

18 47. Cyrus’ song “Flowers” was released on January 13, 2023 –  
 19 approximately ten years after “When I Was Your Man” was released.

20 48. There are substantial similarities between “When I Was Your Man”  
 21 and “Flowers” that demonstrate that “Flowers” is the result of intentional copying.

22 **A. Comparison of the Verse of “When I Was Your Man” and the**  
 23 **Chorus of “Flowers”**

24 49. The melody (single lines of music) and harmony (chords and chord  
 25 progressions) of the chorus in “Flowers” are substantially similar to those of the  
 26 verse in “When I Was Your Man.” Indeed, the opening vocal line from the chorus  
 27 of “Flowers” begins and ends on the same chords as the opening vocal line in the  
 28 verse of “When I Was Your Man.” Additionally, melodic Units 1 and 3 in

“Flowers” identified below duplicate the basic melodic and harmonic design of E-D-C-E-F at the end of Unit 1 in “When I Was Your Man.”

The image shows two musical staves. The top staff is for 'MAN (Verse)' and the bottom staff is for 'FLOWERS (Chorus)'. Both are in 4/4 time. The MAN staff shows Unit 1 with chords Am, C, and Dm. The melody starts with a rest on the downbeat, then D, E, E, D, E, E, D, E, D, C, E, F, F. The FLOWERS staff shows Unit 1 with chords Am and Dm. The melody starts with a rest on the downbeat, then E, E, E, D, C, E, F. Below the FLOWERS staff, Unit 3 is shown with chords Am and Dm. The melody starts with a rest on the downbeat, then D, E, E, E, D, C, E, F. The lyrics for MAN are: 'Same bed but it feels just a lit - tle bit big - ger now'. The lyrics for FLOWERS are: 'I can buy my - self flow - ers' and 'Talk to my - self for hou - rs'.

50. Additionally, as shown below, melodic Unit 2 of the chorus of “Flowers” is significant in that it duplicates the developmental process of the music in Unit 2 in the verse of “When I Was Your Man.” Each unit begins with a G major chord and ends the melody on a C major chord. The overall melodic design in both songs begins after a rest on the downbeat, repeats the pitch D, and moves to pitch E. In the bracketed portion below, the line repeats the pitch D, descends through C to the lowest pitch A, then leaps up ending with the pitches D to E against the C major chord. It is notable that the pitch D (marked with an asterisk) is a dissonant non-chord tone that resolves upward to the E. This distinctive melodic element is duplicated in “Flowers” and represents a kind of musical fingerprint.

The image shows two musical staves. The top staff is for 'MAN (Verse)' and the bottom staff is for 'FLOWERS (Chorus)'. Both are in 4/4 time. The MAN staff shows Unit 2 with chords G, G7, C, Em/B, and Am. The melody starts with a rest on the downbeat, then D, D, D, C, D, C, D, D, C, A, D, E, E. The FLOWERS staff shows Unit 2 with chords G, C, G/B, and Am. The melody starts with a rest on the downbeat, then D, D, D, C, A, E, D, E. The lyrics for MAN are: 'Our song on the ra - di-o but it don't sound the same'. The lyrics for FLOWERS are: 'Write my name in the sand'. Both staves have a bracketed portion indicating a connecting bass-line C-B-A that moves to the next melodic unit beginning on the A minor chord.

51. As shown above in brackets, both songs also feature a connecting bass-line C-B-A that moves to the next melodic unit beginning on the A minor

chord, is stated several times through the songs using two different rhythmic patterns, and is a featured element.

### B. Comparison of the Chorus of “When I Was Your Man” and the Chorus of “Flowers”

52. As shown below, the first eight bars of each chorus section illustrate the significant similarity in the lyrics, melodic, harmonic, and structural musical content between the two songs. Both follow the same 4+4 structural phase design (labeled Phrase 1 and Phrase 2), with each phrase being subdivided into two 2-bar units (as shown in brackets labeled Unit 1, 2, 3, and 4).

The image displays a side-by-side comparison of the first eight bars of the choruses for "When I Was Your Man" (Man) and "Flowers" (Flowers). The score is organized into two main sections: PHRASE 1 and PHRASE 2. Each phrase is further divided into four units (Unit 1, Unit 2, Unit 3, and Unit 4), with each unit spanning two bars. Chord progressions are indicated above the notes for each unit. The lyrics for each unit are written below the notes. The asterisk (\*) at the end of a unit indicates a dramatic pause in the accompaniment.

Phrase	Unit	Man Lyrics	Flowers Lyrics	Man Chords	Flowers Chords
PHRASE 1	Unit 1	That I should have bought you flow - ers	I can buy my - self flow - ers	G, F	Am, Dm
	Unit 2	And held your hand	Write my name in the sand	G, C	G, C
	Unit 3	Should have gave you all my hou - rs	Talk to my - self for hou - rs	C, F	Am, Dm
	Unit 4	When I had the chance	Say things you don't un - der - stand	G, C	G, C
PHRASE 2	Unit 1	That I should have bought you flow - ers	I can buy my - self flow - ers	G, F	Am, Dm
	Unit 2	And held your hand	Write my name in the sand	G, C	G, C
	Unit 3	Should have gave you all my hou - rs	Talk to my - self for hou - rs	C, F	Am, Dm
	Unit 4	When I had the chance	Say things you don't un - der - stand	G, C	G, C

53. Lyrically the first two-bar units of each 4-bar phrase end with the same words, “flowers” in Unit 1 and “hours” in Unit 3. Although the words are not the same at the end of Unit 2, “sand” in “Flowers” rhymes with “hand” in “When I Was Your Man.”

54. Furthermore, the start of each chorus in “Flowers” duplicates the dramatic pause in the accompaniment in “When I was Your Man” that precedes the start of the “flowers” lyric phase.

55. Units 2 and 4 above also share the same chord progression of G to C, and both songs end the first bar of Unit 2 by moving up from the pitch A to pitch E



and end with E-D-E pitches. And, Unit 4 of the choruses of both songs ends using pitch C. Thus, “Flowers” duplicates the pitch ending pattern used in Units 2 and 4 in “When I Was Your Man,” as marked with an asterisk above.

56. A comparison of the lyrics of the two songs also suggests that the musical similarities are no coincidence. As shown below, the lyrics in “Flowers” clearly have a meaningful connection to the lyrics in “When I Was Your Man.”

“When I Was Your Man”	“Flowers”
That I should have brought you flowers	I can buy myself flowers
And held your hand	And I can hold my own hand
Should have gave you all my hours	Talk to myself for hours
Take you to every party cause all you	I can take myself dancing
wanted to do was dance	

57. Along with the word relationship between the “dancing” lyric above, in the below lyric phrases that end with the word “dancing,” “Flowers” contains significant and substantial melodic similarity to the melodic phrase in “When I Was Your Man.”

**Man** Am D7 F

A A G G A E D C

Now my ba-by's danc-ing

**Flowers** Am Dm

G E G E G A E D C

I can take my-self danc-ing

58. The “Flowers” unit above represents a kind of “paraphrase” – *i.e.*, it musically contains and accents the same pitches. Both melodic lines after reaching and stressing the high point on the pitch A, leap down the interval of a fourth to the melodic pitch group E-D-C. Both units also end with a melodic slur on the

syllable “ing” (a slur refers to the common vocal element in which more than one note is sung to a word or syllable).

### C. The Closing or Post-Chorus Sections of “Flowers”

59. The section after the chorus and final section of the recording of “Flowers” has the vocal lyric “Can love me better, I” which, as shown below, corresponds musically to Units 1 and 2 of the chorus. The first iteration is E-E-E-E-E, F and the second is sequenced down a step D-D-D-D-D, E. These melodic statements emulate Units 1 and 2; the pitch E moves up to the ‘goal’ F (>) and the second statement starting on the pitch D moves up to the ‘goal’ E (>). These melodic lines represent developed or varied forms of repetition, and as shown above, this melodic design was taken from “When I Was Your Man.”

The image displays musical notation for the song "Flowers". It is divided into two main sections: "(Chorus)" and "(Post-Chorus)". Each section contains two melodic units, Unit 1 and Unit 2, with corresponding chords and lyrics. Unit 1 of the Chorus has chords Am and Dm, with lyrics "I can buy my - self flow - ers". Unit 2 of the Chorus has chords G and C, with lyrics "Write my name in the sand". The Post-Chorus section also has two units. Unit 1 has chords Am and Dm, with lyrics "Can love me bet - ter". Unit 2 has chords G and C, with lyrics "I can love me bet-ter, ba-by". The notation includes notes on a staff with a treble clef and a key signature of one flat (Bb).

60. The combination of elements – both musical and lyrical – confirm that “Flowers” copies extensively from “When I Was Your Man.”

### IV. Defendants Willfully and Knowingly Exploit “Flowers” Despite Its Infringement of “When I Was Your Man”

61. With “Flowers,” Cyrus, Hein, and Pollack have created a derivative work of “When I Was Your Man” without authorization.

62. Upon information and belief, Defendants comprise the writers, composers, performers, producers, record labels, distributors, and publishers who willingly and knowingly participated in the production, preparation, distribution, public performance, licensing, marketing, promotion, and/or other exploitation of “Flowers,” embodied in all forms of media, including, but not limited to, videos,

1 digital downloads, records, motion pictures, and advertisements. Defendants have  
2 engaged in this conduct for their own pecuniary gain.

3 63. Upon information and belief, Cyrus has performed and continues to  
4 perform “Flowers” at concerts and personal appearances, in videos, and on  
5 television, and Defendants have exploited and continue to exploit “Flowers.”

### 6 **CLAIMS FOR RELIEF**

#### 7 **FIRST CLAIM FOR RELIEF**

#### 8 **(COPYRIGHT INFRINGEMENT (17 U.S.C. § 101 *et seq.*) AGAINST** 9 **ALL DEFENDANTS)**

10 64. Plaintiff realleges and incorporates by reference Paragraphs 1 through  
11 63 as if fully alleged herein.

12 65. “When I Was Your Man” is an original musical composition  
13 registered with the U.S. Copyright Office under Registration Nos. PA0001850617,  
14 PA0001869828, PA0001852243, PA0001834773, and PA0002186926.

15 66. Plaintiff owns a portion of the U.S. copyright in all rights, titles, and  
16 interests in the musical composition “When I Was Your Man,” which it acquired  
17 from one of the song’s co-authors, Philip Lawrence, and his publishing entities.  
18 The assignment of rights in “When I Was Your Man” to Plaintiff was recorded  
19 with the U.S. Copyright Office under Recordation No. V9975D044 on March 6,  
20 2020. Plaintiff is engaged in the commercial exploitation of the copyright it  
21 acquired from Lawrence in “When I Was Your Man.”

22 67. Upon information and belief, Defendants, had access to, and did  
23 access, “When I Was Your Man” following its release in January 2013.

24 68. “Flowers” copies a substantial portion of distinct, important, and  
25 recognizable portions of “When I Was Your Man,” including, but not limited to, its  
26 melodic and harmonic material, pitch ending pattern, bass-line structure, and  
27 lyrics.  
28

1           69. Defendants did not seek or receive permission to copy or interpolate  
2 any portion of “When I Was Your Man” into “Flowers.”

3           70. Defendants’ unauthorized reproduction, distribution, public  
4 performance, display, and/or creation of a derivative work of “When I Was Your  
5 Man” infringes Plaintiff’s exclusive rights in violation of the Copyright Act.

6           71. Defendants have infringed Plaintiff’s copyright in “When I Was Your  
7 Man” by, among other things: (a) substantially copying and publicly performing,  
8 or authorizing the copying and public performance, of “Flowers;” (b) authorizing  
9 the reproduction, distribution, licensing, sale, and/or other exploitation of records  
10 or digital downloads of “Flowers;” and/or (c) participating in and furthering the  
11 aforementioned infringing acts and/or sharing in the proceeds therefrom.

12           72. Upon information and belief, Defendants knew or had reason to know  
13 that “Flowers” is an unauthorized derivative work based on “When I Was Your  
14 Man.”

15           73. Upon information and belief, Defendants induced, caused, and  
16 materially contributed to the production, preparation, distribution, public  
17 performance, licensing, marketing, promotion, and/or other exploitation of  
18 “Flowers” and are continuing to do so in order to profit therefrom.

19           74. Upon information and belief, Defendants had the right and ability to  
20 control one another and have derived a direct financial benefit from their  
21 infringement.

22           75. Defendants’ conduct has been, and continues to be, willful and  
23 knowing.

24           76. As a direct and proximate result of Defendants’ conduct, Plaintiff has  
25 suffered actual damages, including, but not limited to, lost profits.

26           77. Plaintiff has been irreparably harmed and suffered actual damages,  
27 and Defendants have profited in an amount to be determined at trial. Plaintiff’s  
28

1 actual damages include lost license fees and decreased value for “When I Was  
2 Your Man.”

3 78. Pursuant to 17 U.S.C. § 504(b)(c), Plaintiff is entitled, at its election,  
4 to an award of: (a) actual damages, including its own damages and the substantial  
5 profits of Defendants to be proven at trial; or (b) statutory damages in the  
6 maximum amount of \$150,000 per infringement.

7 79. Plaintiff is entitled to declaratory and injunctive relief (17 U.S.C. §  
8 502).

9 80. Plaintiff is also entitled to its costs, including reasonable attorneys’  
10 fees pursuant to 17 U.S.C. § 505.

### 11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment in its favor and against  
13 Defendants as follows:

- 14 1. For judgment that Defendants willfully infringed Plaintiff’s copyright;
- 15 2. For judgment entering a permanent injunction enjoining and  
16 restraining Defendants from infringing Plaintiff’s copyright by reproducing,  
17 distributing, or publicly performing “Flowers;”
- 18 3. For judgment assessing Defendants the damages suffered by Plaintiff,  
19 including, but not limited to, actual damages, lost profits, and statutory damages;
- 20 4. For judgment granting Plaintiff’s costs, reasonable attorneys’ fees,  
21 and interest at the maximum rate permitted by law; and
- 22 5. Such other relief as may be just and proper.

1 Dated: September 16, 2024

**WILLKIE FARR & GALLAGHER LLP**

2  
3 By: /s/ Alex M. Weingarten

Alex M. Weingarten

4 Jeffrey K. Logan

Amy M. Stern

5 Emily Horak

6 *Attorneys for Plaintiff*

7 *Tempo Music Investments, LLC*

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LOS ANGELES, CA 90067  
310.855.3000

**REQUEST FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff requests a trial by jury of all issues triable of right by a jury.

Dated: September 16, 2024

**WILLKIE FARR & GALLAGHER LLP**

By: /s/ Alex M. Weingarten

Alex M. Weingarten

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